



GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 13, 18, 22, 25, 27, and 52

[FAC 2023-01; FAR Case 2020-014; Item III; Docket No. FAR-2020-0014; Sequence No. 1]

RIN 9000-A014

Federal Acquisition Regulation: United States-Mexico-Canada Agreement

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement the United States-Mexico-Canada Agreement Implementation Act.

DATES: Effective December 30, 2022.

FOR FURTHER INFORMATION CONTACT: Mr. Michael O. Jackson, Procurement Analyst, at 202-208-4949 or by email at michaelo.jackson@gsa.gov, for clarification of content.

For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755 or GSARegSec@gsa.gov. Please cite FAC 2023-01, FAR Case 2020-014.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule at 86 FR 70808 on December 13, 2021, to implement the United States-Mexico-Canada Agreement Implementation Act (Pub. L. 116-113). On June 12, 2017, the President announced his intention to commence negotiations with Canada and Mexico to modernize the North American Free Trade Agreement (NAFTA). On November 30, 2018, the Governments of the United States, Mexico, and Canada (the Parties) signed the protocol replacing NAFTA with the United States-Mexico-Canada Agreement (USMCA). On December 10, 2019, the Parties signed the protocol of amendment to the USMCA. On January 29, 2020, the President signed into law the United States-Mexico-Canada Agreement Implementation Act, through which Congress approved the USMCA. On July 1, 2020, the USMCA entered into full force. (See U.S. Trade Representative Determination published June 29, 2020, 85 FR 39037.) Although Canada is still a designated country under the World Trade Organization Government Procurement Agreement, Canada is no longer a Free Trade Agreement country, because chapter 13 of the USMCA (government procurement) applies only to the United States and Mexico. Therefore, references to Canada as a Free Trade Agreement country are deleted, including the \$25,000 threshold. Mexico thresholds remain unchanged.

There were no comments submitted on the proposed rule.

II. Discussion and Analysis

There were no public comments for the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) to review. Therefore, there are no changes in the final rule from the proposed, except for baseline updates. The baseline updates include changes made in FAC 2022-03, FAR case 2022-001, Trade Agreements Thresholds, to incorporate the revised thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements, as determined by the United States Trade Representative, effective on January 1, 2022. The final rule also includes baseline updates published in FAC 2022-05 for FAR case 2021-008, effective on October 25, 2022.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items) or for Commercial Services

This final rule does not create any new provisions or clauses, nor does it change the applicability of any existing provisions or clauses included in solicitations and contracts valued at or below the SAT, or for commercial products (including COTS items) and commercial services.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available

regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity).

E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

V. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801-808) before an interim or final rule takes effect, DoD, GSA, and NASA will send the rule and the "Submission of Federal Rules Under the Congressional Review Act" form to each House of the Congress and to the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget has determined that this is not a major rule under 5 U.S.C. 804.

VI. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601-612. The FRFA is summarized as follows:

The objective of this rule is to implement the USMCA Implementation Act. The rule makes changes in the FAR to conform to Chapter 13 of the USMCA, which sets forth certain obligations between the United States and Mexico with respect to Government procurement of goods and services, as specified in Annex 13-A of the USMCA. Chapter 13 of the USMCA applies only between Mexico and the United States and does not cover Canada. Although Canada is still a designated country under the World Trade Organization Government Procurement Agreement, Canada is no longer a Free Trade Agreement country, because chapter 13 of the USMCA (government procurement) applies only to the United States and Mexico. Therefore, references to Canada as a Free Trade Agreement country in the FAR are deleted, including the \$25,000 threshold.

Canadian end products will still receive nondiscriminatory treatment with respect to the Buy American statute but starting at \$183,000, rather than \$25,000. Mexico thresholds remain unchanged.

The legal basis for these changes is Public Law 116-113.

There were no public comments submitted in response to the initial regulatory flexibility analysis.

DoD, GSA, and NASA do not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601-612, because, although the rule removes Canada as a Free Trade Agreement designated country and deletes the associated \$25,000 threshold, Canada remains a World Trade Organization Government Procurement Agreement designated country, at \$183,000. The Mexico thresholds remain unchanged.

Based on fiscal year 2019 data from the Federal Procurement Data System, 129,308 small businesses were awarded Government contracts. Impacts to small businesses are anticipated to be negligible based on the data analysis approved under Office of Management and Budget (OMB) Control Number 9000-0024, Buy American, Trade Agreements, and Duty-Free Entry. Alternate I of the clause, FAR 52.225-3, Buy American - Free Trade Agreements - Israeli Trade Act, and Alternate I of the provision, FAR 52.225-4, Buy American - Free Trade Agreements - Israeli Trade Act Certificate, are deleted. The Trade Agreements clause at FAR 52.225-5, the Buy American - Construction Materials under Trade Agreements clause at FAR 52.225-11, and the FAR 52.225-23 equivalent for the Recovery Act are revised to delete references to Canada as a Free Trade Agreement country. In regard to FAR 52.225-23, additional construction awards are not anticipated using Recovery Act funds.

This final rule does not include any new reporting, recordkeeping, or other compliance requirements for small businesses. The rule does not impose additional information collection requirements to the paperwork burden previously approved by OMB under the Paperwork Reduction Act (44 U.S.C. 3501-3521), Control Number 9000-0024, Buy American, Trade Agreements, and Duty-Free Entry.

There are no known significant alternative approaches to the final rule.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division. The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

VII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501-3521) does apply. However, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved by the Office of Management and Budget Control Number 9000-0024, Buy American, Trade Agreements, and Duty-Free Entry.

List of Subjects in 48 CFR Parts 4, 13, 18, 22, 25, 27, and 52

Government procurement.

William F. Clark,
Director,
Office of Government-wide
Acquisition Policy,
Office of Acquisition Policy,
Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 4, 13, 18, 22, 25, 27, and 52 as set forth below:

1. The authority citation for 48 CFR parts 4, 13, 18, 22, 25, 27, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

PART 4—ADMINISTRATIVE AND INFORMATION MATTERS

4.1202 [Amended]

2. Amend section 4.1202 by removing from paragraph (a)(28) the phrase "Alternates I, II, and III" and adding "Alternates II and III" in its place.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

13.302-5 [Amended]

3. Amend section 13.302-5, in paragraph (d)(3)(i) by removing the word "FAR" twice.

PART 18—EMERGENCY ACQUISITIONS

18.120 [Removed and Reserved]

4. Remove and reserve section 18.120.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT

ACQUISITIONS

22.1503 [Amended]

5. Amend section 22.1503 by—

a. Removing paragraph (b)(1);

b. Redesignating paragraphs (b)(2) through (4) as paragraphs (b)(1) through (3); and

c. Adding "Canada," in newly redesignated paragraph (b) (3) between the words "Bulgaria" and "Croatia".

22.1505 [Amended]

6. Amend section 22.1505 in paragraph (a) by removing "\$25,000" and adding "\$50,000" in its place.

PART 25—FOREIGN ACQUISITION

25.003 [Amended]

7. Amend section 25.003 by removing "Canada," from paragraph (2) of the definition of "Designated country" and from the definition of "Free Trade Agreement country".

8. Amend section 25.400 by revising paragraph (a) (2) (i) to read as follows:

25.400 Scope of subpart.

(a) * * *

(2) * * *

(i) USMCA (United States-Mexico-Canada Agreement, as approved by Congress in the United States-Mexico-Canada Agreement Implementation Act (Government Procurement Agreement applicable only to the United States and Mexico) (Pub. L. 116-113) (19 U.S.C. chapter 29 (sections 4501-4732)));

* * * * *

9. Amend section 25.401 by—

a. Removing "and" from the end of paragraph (a) (4);

b. Removing "13.501(a)." from paragraph (a) (5) and adding "13.501(a); and" in its place;

c. Adding paragraph (a) (6); and

d. In the table of paragraph (b), revising the heading of the third column.

The addition and revision read as follows:

25.401 Exceptions.

(a) * * *

(6) Goods and services specifically excluded under individual trade agreements, such as exceptions negotiated by the U.S. Trade Representative for particular agencies. See the agency supplementary regulations.

(b) * * * * *

			Bahrain FTA, CAFTA-DR, Chile FTA, Columbia FTA, USMCA, Oman FTA, Panama FTA, and Peru FTA		
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10. Amend section 25.402 by revising table 1 to paragraph (b) to read as follows:

25.402 General.

* * * * *

(b) * * *

Table 1 to Paragraph (b)

Trade agreement	Supply contract (equal to or exceeding)	Service contract (equal to or exceeding)	Construction contract (equal to or exceeding)
WTO GPA	\$183,000	\$183,000	\$7,032,000
FTAs:			

Australia FTA	92,319	92,319	7,032,000
Bahrain FTA	183,000	183,000	12,001,460
CAFTA-DR (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua)	92,319	92,319	7,032,000
Chile FTA	92,319	92,319	7,032,000
Colombia FTA	92,319	92,319	7,032,000
Korea FTA	100,000	100,000	7,032,000
Morocco FTA	183,000	183,000	7,032,000
USMCA:			
-Mexico	92,319	92,319	12,001,460
Oman FTA	183,000	183,000	12,001,460
Panama FTA	183,000	183,000	7,032,000
Peru FTA	183,000	183,000	7,032,000
Singapore FTA	92,319	92,319	7,032,000
Israeli Trade Act	50,000		

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25.504-1 [Amended]

11. Amend section 25.504-1 by removing "\$25,000" from paragraphs (a)(2) and (c)(2) and adding "\$50,000" in its place.

25.1101 [Amended]

12. Amend section 25.1101 by—

- a. Removing "\$25,000" from paragraphs (a)(1) introductory text and (b)(1)(i)(A) and adding "\$50,000" in its place, wherever it appears;
- b. Removing paragraph (b)(1)(ii);

c. Redesignating paragraphs (b) (1) (iii) through (v) as paragraphs (b) (1) (ii) through (iv);

d. Removing from the newly redesignated paragraph (b) (1) (ii) the phrase "*Alternate II*" and adding the phrase "*Alternate II*" in its place;

e. Removing paragraph (b) (2) (ii);

f. Redesignating paragraphs (b) (2) (iii) and (iv) as paragraphs (b) (2) (ii) and (iii); and

g. Removing from the newly redesignated paragraph (b) (2) (ii) the phrase "*Alternate II*" and adding the phrase "*Alternate II*" in its place.

PART 27—PATENTS, DATA, AND COPYRIGHTS

13. Revise section 27.204-1 to read as follows:

27.204-1 Use of patented technology under the United States-Mexico-Canada Agreement.

When questions arise with regard to use of patented technology under the United States-Mexico-Canada Agreement, the contracting officer should consult with legal counsel. Note that Article 20.6(a) of the Agreement discusses public health and pharmaceuticals.

14. Amend section 27.204-2 by adding a sentence to the end of the paragraph to read as follows:

27.204-2 Use of patented technology under the General Agreement on Tariffs and Trade (GATT).

* * * Article 20.40 of the United States-Mexico-Canada Agreement preserves parties' rights under Article 31.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

15. Amend section 52.204-8 by revising the date of the provision and paragraph (c)(1)(xxi) to read as follows:

52.204-8 Annual Representations and Certifications.

* * * * *

ANNUAL REPRESENTATIONS AND CERTIFICATIONS (DEC 2022)

* * * * *

(c)(1) * * *

(xxi) 52.225-4, Buy American-Free Trade Agreements-Israeli Trade Act Certificate. (Basic, Alternates II and III.) This provision applies to solicitations containing the clause at 52.225-3.

(A) If the acquisition value is less than \$50,000, the basic provision applies.

(B) If the acquisition value is \$50,000 or more but is less than \$92,319, the provision with its Alternate II applies.

(C) If the acquisition value is \$92,319 or more but is less than \$100,000, the provision with its Alternate III applies.

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16. Amend section 52.212-3 by—

a. Revising the date of the provision;

- b. Removing paragraph (g) (2);
- c. Redesignating paragraphs (g) (3) through (5) as paragraphs (g) (2) through (4); and
- d. Revising the newly redesignated paragraph (g) (2).

The revisions read as follows:

52.212-3 Offeror Representations and Certifications—Commercial Products and Commercial Services.

* * * * *

OFFEROR REPRESENTATIONS AND CERTIFICATIONS—COMMERCIAL PRODUCTS AND

COMMERCIAL SERVICES (DEC 2022)

* * * * *

(g) * * *

(2) *Buy American—Free Trade Agreements—Israeli Trade Act Certificate, Alternate II.* If *Alternate II* to the clause at FAR 52.225-3 is included in this solicitation, substitute the following paragraph (g) (1) (ii) for paragraph (g) (1) (ii) of the basic provision:

(g) (1) (ii) The offeror certifies that the following supplies are Israeli end products as defined in the clause of this solicitation entitled “Buy American—Free Trade Agreements—Israeli Trade Act”:

Israeli End Products:

Line Item No.		

[List as necessary]

* * * * *

17. Amend section 52.212-5 by—

a. Revising the date of the clause;

b. Removing from paragraph (b) (28) the date “(JAN 2022)” and adding “(DEC 2022)” in its place;

c. Revising paragraphs (b) (49) (i) and (ii);

d. Removing from paragraph (b) (49) (iii) the date “(JAN 2021)” and adding “(DEC 2022)” in its place; and

e. Removing from paragraph (b) (50) the date “(OCT 2019)” and adding “(DEC 2022)” in its place.

The revisions read as follows:

52.212-5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services.

* * * * *

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE

ORDERS—COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES (DEC 2022)

* * * * *

(b) * * *

(49) (i) 52.225-3, Buy American - Free Trade Agreements - Israeli Trade Act (DEC 2022) (19 U.S.C. 3301 note, 19 U.S.C. 2112 note, 19 U.S.C. 3805 note, 19 U.S.C. 4001 note, 19 U.S.C. chapter 29 (sections 4501-4732), Pub. L. 103-182,

108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283,
110-138, 112-41, 112-42, and 112-43.

(ii) Alternate I [Reserved].

* * * * *

18. Amend section 52.213-4 by—

a. Revising the date of the clause;

b. In paragraph (b) (1) (ii)—

i. Removing the date “(JAN 2022)” and adding
“(DEC 2022)” in its place; and

ii. Removing the phrase “FAR”;

c. In paragraph (b) (1) (xvii) (A) introductory text
removing the phrase “FAR”; and

d. Removing “\$25,000” from paragraph
(b) (1) (xvii) (A) (2) and adding “\$50,000” in its place.

The revision reads as follows:

**52.213-4 Terms and Conditions—Simplified Acquisitions
(Other Than Commercial Products and Commercial Services).**

* * * * *

TERMS AND CONDITIONS—SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL
PRODUCTS AND COMMERCIAL SERVICES) (DEC 2022)

* * * * *

19. Amend section 52.222-19 by—

a. Revising the date of the clause;

b. Removing paragraph (a) (1);

c. Redesignating paragraphs (a) (2) through (4) as
paragraphs (a) (1) through (3); and

d. Adding "Canada," in newly redesignated paragraph (a) (3) between "Bulgaria," and "Croatia".

The revision reads as follows:

52.222-19 Child Labor—Cooperation with Authorities and Remedies.

* * * * *

CHILD LABOR—COOPERATION WITH AUTHORITIES AND REMEDIES (DEC 2022)

* * * * *

20. Amend section 52.225-3 by—

- a. Revising the date of the clause;
- b. In paragraph (a), in the definition of "Free Trade Agreement country" removing "Canada,";
- c. Removing and reserving Alternate I;
- d. Revising Alternate II;
- e. Removing from the introductory text of Alternate III "25.1101(b) (1) (iv)" and adding "25.1101(b) (1) (iii)" in its place; and
- f. Removing from the introductory text of Alternate IV "25.1101(b) (1) (v)" and adding "25.1101(b) (1) (iv)" in its place.

The revisions read as follows:

52.225-3 Buy American—Free Trade Agreements—Israeli Trade Act.

* * * * *

BUY AMERICAN—FREE TRADE AGREEMENTS—ISRAELI TRADE ACT (DEC 2022)

* * * * *

Alternate II (DEC 2022). As prescribed in 25.1101(b)(1)(ii), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) *Delivery of end products.* 41 U.S.C. chapter 83 provides a preference for domestic end products for supplies acquired for use in the United States. In accordance with 41 U.S.C. 1907, the domestic content test of the Buy American statute is waived for an end product that is a COTS item (see 12.505(a)(1)), except that for an end product that consists wholly or predominantly of iron or steel or a combination of both, the domestic content test is applied only to the iron and steel content of the end product, excluding COTS fasteners. In addition, the Contracting Officer has determined that the Israeli Trade Act applies to this acquisition. Unless otherwise specified, this trade agreement applies to all items in the Schedule. The Contractor shall deliver under this contract only domestic end products except to the extent that, in its offer, it specified delivery of foreign end products in the provision entitled "Buy American-Free Trade Agreements-Israeli Trade Act." If the Contractor specified in its offer that the Contractor would supply an Israeli end product, then the Contractor shall supply an Israeli end product or, at the Contractor's option, a domestic end product.

* * * * *

21. Amend section 52.225-4 by—

- a. Removing and reserving Alternate I;
- b. Revising Alternate II; and
- c. In Alternate III removing from the introductory text “25.1101(b) (2) (iv)” and adding “25.1101(b) (2) (iii)” in its place.

The revisions read as follows:

52.225-4 Buy American-Free Trade Agreements-Israeli Trade Act Certificate.

* * * * *

Alternate II (DEC 2022). As prescribed in 25.1101(b) (2) (ii), substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) The offeror certifies that the following supplies are Israeli end products as defined in the clause of this solicitation entitled “Buy American-Free Trade Agreements-Israeli Trade Act-Balance of Payments Program”:

Israeli End Products

Line Item No.		

[List as necessary]

* * * * *

22. Amend section 52.225-5 by—

- a. Revising the date of the clause; and
- b. In paragraph (a), in the definition "Designated country" removing "Canada," from paragraph (2).

The revision reads as follows:

52.225-5 Trade Agreements.

* * * * *

TRADE AGREEMENTS (DEC 2022)

* * * * *

23. Amend section 52.225-11 by—

- a. Revising the date of the clause;
- b. In paragraph (a), in the definition of "Designated country", removing "Canada," from paragraph (2);
- c. Revising the date of Alternate I; and
- d. In paragraph (b)(1) of Alternate I:
 - i. Removing the phrase "FAR"; and
 - ii. Removing the phrase "NAFTA" and adding "United States-Mexico-Canada Agreement" in its place.

The revisions read as follows:

52.225-11 Buy American—Construction Materials Under Trade Agreements.

* * * * *

BUY AMERICAN—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (DEC 2022)

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Alternate I (DEC 2022). * * *

* * * * *

24. Amend section 52.225-23 by-

a. Revising the date of the clause; and

b. In paragraph (a), in the definitions of "Designated country" and "Recovery Act designated country", removing "Canada," from paragraphs (2).

The revisions read as follows:

**52.225-23 Required Use of American Iron, Steel, and
Manufactured Goods—Buy American Statute—Construction
Materials Under Trade Agreements.**

* * * * *

REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS—BUY
AMERICAN STATUTE—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (DEC
2022)

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[FR Doc. 2022-25960 Filed: 11/30/2022 8:45 am; Publication Date: 12/1/2022]